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22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**  
24 **SAN FRANCISCO DIVISION**

25 THE PRAXIS PROJECT, a non-profit  
26 corporation,

27 Plaintiff,

28 v.

THE COCA-COLA COMPANY and  
AMERICAN BEVERAGE ASSOCIATION,

Defendants.

Case No. 3:17-cv-00016-JSC

**AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiff The Praxis Project (“Praxis” or “Plaintiff”) brings this action against The Coca-  
2 Cola Company (“Coca-Cola”) and the American Beverage Association (“ABA”) (collectively,  
3 “Defendants”). Plaintiff’s allegations against Defendants are based on information and belief  
4 and on investigation of Plaintiff’s counsel, except for allegations specifically pertaining to  
5 Plaintiff, which are based on Plaintiff’s personal knowledge.

### 6 **NATURE OF THE ACTION**

7 1. This is an action under the California Unfair Competition Law and False  
8 Advertising Law to enjoin Coca-Cola and the ABA from engaging in false and misleading  
9 marketing of sugar-sweetened beverages.<sup>1</sup> Plaintiff also asserts claims for the intentional and  
10 negligent breach of a special duty.

11 2. Coca-Cola, the leading manufacturer and supplier in the world of sugar-  
12 sweetened beverages, deceives consumers about their health impact. It does so independently,  
13 and also with the assistance of and through statements made by the American Beverage  
14 Association, a trade organization which Coca-Cola funds and materially directs.

15 3. For years, Defendants have engaged in a pattern of deception to mislead and  
16 confuse the public (and governmental entities that bear responsibility for the public health) about  
17 the scientific consensus that consumption of sugar-sweetened beverages is linked to obesity, type  
18 2 diabetes, and cardiovascular disease.

19 4. Defendant Coca-Cola has also engaged in a pattern of deception to mislead the  
20 public (and governmental entities that bear responsibility for the public health) regarding its  
21 advertising to children.

22 5. Although Defendants have publicly pledged allegiance to objective scientific  
23 criteria, they have instead represented falsely that sugar-sweetened beverages are not  
24 scientifically linked to obesity, diabetes, and cardiovascular disease, and have waged an

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26 <sup>1</sup> “Sugar-sweetened beverage” refers to any carbonated or non-carbonated drink that is sweetened  
27 with sugar or high fructose corn syrup, or other caloric sweeteners, including soda, fruit drinks, teas,  
28 coffees, sports drinks, and energy drinks. CTRS. FOR DISEASE CONTROL & PREVENTION, THE CDC  
GUIDE TO STRATEGIES FOR REDUCING THE CONSUMPTION OF SUGAR-SWEETENED BEVERAGES 4  
(2010), <http://goo.gl/OWgFs>.

1 aggressive campaign of disinformation about the health consequences of consuming sugar-  
2 sweetened beverages.

3         6. Defendants have undertaken these actions even though they know and have  
4 known that sugar-sweetened beverages are linked to serious medical conditions, including  
5 obesity, diabetes, and cardiovascular disease, when consumed regularly.

6         7. Although Defendant Coca-Cola promised that it would not advertise sugar-  
7 sweetened beverages to children, it has advertised to children on a massive scale.

8         8. A primary purpose of these ongoing campaigns of disinformation and  
9 misrepresentation is to maintain and increase the sales of sugar-sweetened beverages, and to  
10 thwart and delay efforts of government entities to regulate sugar-sweetened beverages through  
11 warning labels, taxes, and other measures designed to make consumers aware of the potential for  
12 harm.

13         9. Defendants have engaged in this conduct despite knowing that sugar-sweetened  
14 beverages are scientifically linked to obesity, diabetes, and cardiovascular disease, and these  
15 diseases are at epidemic levels in California and the United States.

16         10. Each year, millions of Californians, and others across the United States, will  
17 either develop, or develop the markers for, obesity, type 2 diabetes, and/or cardiovascular  
18 disease, owing at least in part to consumption of sugar-sweetened beverages.

19         11. Each year, Coca-Cola reaps huge profits from the sale of its sugar-sweetened  
20 beverages.

21         12. Each year, Coca-Cola spends billions of dollars on misleading and deceptive  
22 promotions and advertising that have enormous appeal to consumers, including children, which  
23 advertising effects persist over years.

24         13. Plaintiff seeks injunctive relief for the conduct alleged in the complaint. Among  
25 other things, Plaintiff seeks a permanent injunction to require the Defendants to: publicly  
26 disclose their files on the potential health implications of consuming sugar-sweetened beverages;  
27 fund a public education campaign to educate consumers about the association between sugar-  
28 sweetened beverage consumption and obesity, diabetes, and cardiovascular disease; cease

prospectively all deceptive advertising and promotions that imply in any manner that sugar-sweetened beverage consumption is not linked to obesity, diabetes, and cardiovascular disease, and conversely is healthy; and, in the case of Coca-Cola, cease all advertising that reaches children under the age of 12 in significant numbers.

## **PARTIES**

14. Plaintiff Praxis is a nonprofit corporation pursuant to section 501(c)(3) of the Internal Revenue Code, with offices in Oakland, California, and Washington, DC. Plaintiff's mission is to build healthier communities, and through the efforts of its staff, Plaintiff engages in significant advocacy relating to sugar-sweetened beverages and the health consequences of their frequent consumption. Plaintiff's work is well recognized, including but not limited to the efforts of its Executive Director, Xavier Morales. As alleged in more detail below, Plaintiff has diverted significant resources to its advocacy concerning sugar-sweetened beverages. This diversion has prevented Plaintiff from allocating resources to other projects that advance healthier communities. Plaintiff could have avoided many of these expenditures if Defendants had not engaged in deception about the consequences of consuming sugar-sweetened beverages, consistent with its legal duty.

15. Defendant Coca-Cola is a public corporation, organized and existing under the laws of the State of Delaware, and headquartered in Atlanta, Georgia. Coca-Cola describes itself as the largest manufacturer, distributor, and marketer of nonalcoholic beverage concentrates and syrups in the world, many of which are sugar-sweetened beverages, including its flagship Coca-Cola, or Coke. In 2012, Coca-Cola's gross profits were \$28.96 billion.<sup>2</sup> In 2012, its advertising budget was \$3.34 billion.<sup>3</sup>

16. Defendant American Beverage Association is a trade association headquartered in Washington, DC that represents the manufacturers, bottlers and distributors of various drinks,

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<sup>2</sup> The Coca-Cola Co., Annual Report (Form 10-K), at 50 (Feb. 27, 2013), <http://goo.gl/RzMbtF> (FY 2012).

<sup>3</sup> *Id.* at 54.

1 including sugar-sweetened beverages. Coca-Cola executives help manage and direct the ABA,  
2 and materially fund its operations.

3 **JURISDICTION AND VENUE**

4 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
5 § 1332 because Plaintiff and Defendants are citizens of different states and the amount in  
6 controversy exceeds \$75,000.

7 18. The Court has personal jurisdiction over Defendant Coca-Cola because it  
8 conducts substantial business in this district and throughout the State of California, and over  
9 Defendant American Beverage Association because it has made statements in this district and  
10 has specifically sought to influence consumer perceptions on sugar-sweetened beverages in this  
11 district.

12 19. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial  
13 number of the acts and omissions alleged herein occurred within this district.

14 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

15 **I. HEALTH CONSEQUENCES OF SUGAR-SWEETENED BEVERAGE**  
16 **CONSUMPTION**

17 20. The American Heart Association recommends a daily maximum of six (6)  
18 teaspoons of added sugar for adult women and children, and nine (9) teaspoons for men.<sup>4</sup>

19 21. A 16-ounce bottle of Coke, by comparison, has 12 teaspoons of sugar, a 15-  
20 ounce bottle of Coca-Cola's Minute Maid Cranberry Grape Juice Beverage has approximately 13  
21 teaspoons of added sugar, and a 20-ounce bottle of the company's vitaminwater has 8  
22 teaspoons.<sup>5</sup> Twelve teaspoons of sugar is 200% of the AHA recommended daily maximum for  
23 women, and more than twice the sugar content of a Twix candy bar.<sup>6</sup>

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25 \_\_\_\_\_  
26 <sup>4</sup> *Added Sugars*, AM. HEART ASS'N, <http://goo.gl/PoigAa> (last visited Jan. 4, 2017).

27 <sup>5</sup> Of the parents who purchased vitaminwater for their children, 78% thought it was healthy. Tina  
28 Rosenberg, *Labeling the Danger in Soda*, N.Y. TIMES (March 30, 2016), <http://goo.gl/TnryHW>.

<sup>6</sup> *Id.*

1           22.     Sugar-sweetened beverages are the leading source of added sugars in the  
2 American diet.<sup>7</sup>

3           23.     Sugar-sweetened beverage consumption is scientifically linked to obesity, type 2  
4 diabetes, and cardiovascular disease.

5           24.     Stronger evidence links these diseases with the consumption of sugar-sweetened  
6 beverages than with the consumption of added sugar in non-liquid forms.<sup>8</sup>

7           25.     Numerous governmental and medical bodies have recognized this link, including  
8 the Centers for Disease Control and Prevention (“CDC”), the 2015 Dietary Guidelines Advisory  
9 Committee, the Institute of Medicine, the American Heart Association, the Obesity Society, and  
10 the World Health Organization, and have urged reduction of sugar-sweetened beverage  
11 consumption, mainly as a means to address the epidemics of obesity, type 2 diabetes, and/or  
12 cardiovascular disease.

13           26.     Consistent with these conclusions and recommendations, and after entertaining  
14 key expert testimony, this Court found that the warning required on certain sugar-sweetened  
15 beverage advertisements in San Francisco—which reads, “WARNING: Drinking beverages  
16 with added sugar(s) contributes to obesity, diabetes, and tooth decay”—is “factual and  
17 accurate.”<sup>9</sup>

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24 <sup>7</sup> U.S. DEP’T OF AGRIC. & U.S. DEP’T OF HEALTH & HUMAN SERVS., SCIENTIFIC REPORT OF THE 2015  
25 DIETARY GUIDELINES ADVISORY COMMITTEE 148 fig. D1.36 (2015) (DIETARY GUIDELINES  
ADVISORY COMMITTEE), <http://goo.gl/2rc9v3>.

26 <sup>8</sup> CREDIT SUISSE, SUGAR CONSUMPTION AT A CROSSROADS 8–9 (2013), <https://goo.gl/7rMhXY>;  
27 Expert Report of Walter Willett at ¶ 10, *Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 3:15-cv-03415-EMC (N.D. Cal. filed Feb. 23, 2016) (“Willett Report”).

28 <sup>9</sup> *Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 3:15-cv-03415-EMC, 2016 WL 2865893,  
at \*18 (N.D. Cal. May 17, 2016).

27. Studies tracking thousands of adults for years show that those who consume sugar-sweetened beverages have higher rates of obesity and obesity-related chronic diseases.<sup>10</sup>

28. One highly regarded study (double-blind, randomized controlled intervention trial (“RCT”)) involving 641 Dutch children reported that those who were given just one 8-ounce sugar-sweetened drink a day gained more weight and body fat over 1½ years than those who were given sugar-free drinks. Similar findings have been reported in a number of other clinical trials on adults and children.<sup>11</sup>

29. Scientific research has also established a link between the consumption of sugar-sweetened beverages and type 2 diabetes, which is only partly due to the impact of sugar-sweetened beverages on weight gain.

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<sup>10</sup> See, e.g., Ravi Dhingra et al., *Soft Drink Consumption and Risk of Developing Cardiometabolic Risk Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community*, 116 CIRCULATION 480 (2007); Frank B. Hu & Vasanti S. Malik, *Sugar-Sweetened Beverages and Risk of Obesity and Type 2 Diabetes: Epidemiologic Evidence*, 100 PHYSIOLOGY & BEHAV. 47 (2010); Vasanti S. Malik et al., *Sugar Sweetened Beverages and Weight Gain in Children and Adults: A Systematic Review and Meta-Analysis*, 98 AM. J. CLINICAL NUTRITION 1084 (2013); Julie R. Palmer et al., *Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American Women*, 168 ARCHIVES INTERNAL MED. 1487 (2008); Qibin Qi et al., *Sugar-Sweetened Beverages and Genetic Risk of Obesity*, 367 NEW ENG. J. MED. 1387 (2012); Matthias B. Schulze et al., *Sugar-Sweetened Beverages, Weight Gain, and Incidence of Type 2 Diabetes in Young and Middle-Aged Women*, 292 JAMA 927 (2004); Jiantao Ma, *Sugar-Sweetened Beverage but Not Diet Soda Consumption Is Positively Associated with Progression of Insulin Resistance*, J. OF NUTRITION 234047 (Nov. 9, 2016), <http://jn.nutrition.org/content/early/2016/11/09/jn.116.234047.full.pdf+html>.

<sup>11</sup> Janne C. de Ruyter et al., *A Trial of Sugar-Free or Sugar-Sweetened Beverages and Body Weight in Children*, 367 NEW ENG. J. MED. 1397 (2012); see also Cara B. Ebbeling et al., *A Randomized Trial of Sugar-Sweetened Beverages and Adolescent Body Weight*, 367 NEW ENG. J. MED. 1407 (2012); Cara B. Ebbeling et al., *Effects of Decreasing Sugar-Sweetened Beverage Consumption on Body Weight in Adolescents: A Randomized Controlled Pilot Study*, 117 PEDIATRICS 673 (2006); Janet James et al., *Preventing Childhood Obesity by Reducing Consumption of Carbonated Drinks: Cluster Randomised Controlled Trial*, 328 BMJ 1237 (2004); Anne Raben et al., *Increased Postprandial Glycaemia, Insulinemia, and Lipidemia After 10 Weeks’ Sucrose-Rich Diet Compared to an Artificially Sweetened Diet: A Randomized Controlled Trial*, 55 FOOD NUTRITION RES. 5961 (2011); Anne Raben et al., *Sucrose Compared with Artificial Sweeteners: Different Effects on Ad Libitum Food Intake and Body Weight After 10 Wk of Supplementation in Overweight Subjects*, 76 AM. J. CLINICAL NUTRITION 721 (2002); Michael G. Tordoff & Anne M. Alleva, *Effect of Drinking Soda Sweetened with Aspartame or High-Fructose Corn Syrup on Food Intake and Body Weight*, 51 AM. J. CLINICAL NUTRITION 963 (1990).

30. Put another way, the consumption of sugar-sweetened beverages is linked to an increase in type 2 diabetes even after researchers account for the impact of sugar-sweetened beverages on weight.<sup>12</sup>

31. The 2015 Dietary Guidelines Advisory Committee concluded that “[s]trong evidence shows that higher consumption of added sugars, especially sugar sweetened beverages, increases the risk of type 2 diabetes among adults and this relationship is not fully explained by body weight.”<sup>13</sup>

32. Scientific studies also link sugar-sweetened beverage consumption to a higher risk of other obesity-related conditions, including coronary heart disease and stroke (collectively, cardiovascular disease).<sup>14</sup>

33. A systematic review and meta-analysis of 39 randomized clinical trials concluded that higher intakes of sugars are associated with risk factors for cardiovascular disease including

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<sup>12</sup> Ravi Dhingra et al., *Soft Drink Consumption and Risk of Developing Cardiometabolic Risk Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community*, 116 CIRCULATION 480 (2007); Darren C. Greenwood et al., *Association Between Sugar-Sweetened and Artificially Sweetened Soft Drinks and Type 2 Diabetes: Systematic Review and Dose-Response Meta-Analysis of Prospective Studies*, 112 BRIT. J. NUTRITION 725 (2014); Fumiaki Imamura et al., *Consumption of Sugar Sweetened Beverages, Artificially Sweetened Beverages, and Fruit Juice and Incidence of Type 2 Diabetes: Systematic Review, Meta-Analysis, and Estimation of Population Attributable Fraction*, 351 BMJ h3576 (2015); Lawrence de Koning et al., *Sugar-Sweetened and Artificially Sweetened Beverage Consumption and Risk of Type 2 Diabetes in Men*, 93 AM. J. CLINICAL NUTRITION 1321 (2011); Vasanti S. Malik et al., *Sugar-Sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes: A Meta-Analysis*, 33 DIABETES CARE 2477 (2010); Andrew O. Odegaard et al., *Soft Drink and Juice Consumption and Risk of Physician-Diagnosed Incident Type 2 Diabetes*, 171 AM. J. EPIDEMIOLOGY 701 (2010); Julie R. Palmer et al., *Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American Women*, 168 ARCHIVES INTERNAL MED. 1487 (2008); Matthias B. Schulze et al., *Sugar-Sweetened Beverages, Weight Gain, and Incidence of Type 2 Diabetes in Young and Middle-Aged Women*, 292 JAMA 927 (2004); The InterAct Consortium, *Consumption of Sweet Beverages and Type 2 Diabetes Incidence in European Adults: Results from EPIC-InterAct*, 56 DIABETOLOGIA 1520 (2013).

<sup>13</sup> DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 7, at Part D, Chapter 6, p. 20; *accord* Willett Report, *supra* note 8, at ¶ 51 (“Findings from well-designed prospective cohort studies have shown a strong and consistent association between SSB consumption and diabetes.”).

<sup>14</sup> Adam M. Bernstein et al., *Soda Consumption and the Risk of Stroke in Men and Women*, 95 AM. J. CLINICAL NUTRITION 1190 (2012); Lawrence de Koning et al., *Sweetened Beverage Consumption, Incident Coronary Heart Disease, and Biomarkers of Risk in Men*, 125 CIRCULATION 1735 (2012); Teresa T. Fung et al., *Sweetened Beverage Consumption and Risk of Coronary Heart Disease in Women*, 89 AM. J. CLINICAL NUTRITION 1037 (2009).



1 higher levels of triglycerides, LDL ("bad") cholesterol, and blood pressure, and that "the relation  
2 is independent of effects of sugars on body weight."<sup>15</sup>

3 34. Thus, the Dietary Guidelines Advisory Committee said, "higher intake of added  
4 sugars, especially in the form of sugar-sweetened beverages, is consistently associated with  
5 increased risk of hypertension, stroke, and [cardiovascular disease] in adults."<sup>16</sup>

6 35. Likewise, "[T]he recommendations from the Institute of Medicine, the American  
7 Heart Association, the Obesity Society, and many other organizations [are] to reduce the  
8 consumption of sugar-sweetened beverages in both children and adults."<sup>17</sup>

9 36. This is because the "consumption of sugar-sweetened beverages causes excess  
10 weight gain and is associated with increased risk of type 2 diabetes and cardiovascular disease;  
11 thus, these beverages are unique dietary contributors to obesity and related chronic diseases."<sup>18</sup>

12 37. Today, roughly one-third of children and two-thirds of adults in the United States  
13 are overweight or obese.<sup>19</sup> Since 1980, obesity rates in the United States have tripled in  
14 children,<sup>20</sup> and doubled in adults.<sup>21</sup>

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17 <sup>15</sup> Te Morenga LA, et al. *Dietary Sugars and Cardiometabolic Risk: Systematic Review and*  
18 *Meta-analyses of Randomized Controlled Trials of the Effects on Blood Pressure and Lipids*,  
AM. J. CLINICAL NUTRITION 65-79 (2014).

19 <sup>16</sup> DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 7, at Part D, Chapter 6, p. 20.

20 <sup>17</sup> Sonia Caprio, *Calories from Soft Drinks—Do They Matter?*, 367 NEW ENG. J. MED. 1462, 1463  
(2012).

21 <sup>18</sup> Vasanti S. Malik & Frank B. Hu, *Fructose and Cardiometabolic Health: What the Evidence from*  
*Sugar-Sweetened Beverages Tells Us*, 66 J. AM. C. CARDIOLOGY 1615 (2015).

22 <sup>19</sup> Cynthia L. Ogden et al., *Prevalence of Childhood and Adult Obesity in the United States, 2011–*  
23 *2012*, 311 JAMA 806 (2014). Worldwide, according to McKinsey & Company, "almost half of the  
24 world's adult population could be overweight or obese by 2030." MCKINSEY GLOB. INST.,  
OVERCOMING OBESITY: AN INITIAL ECONOMIC ANALYSIS 11 (2014) (internal citation omitted). The  
25 McKinsey Report added a critical public health perspective: the 2.1 billion obese or overweight  
people in the world is two and a half times the number of undernourished people. *Id.* at 14.

26 <sup>20</sup> CYNTHIA OGDEN & MARGARET CARROLL, CTRS. FOR DISEASE CONTROL & PREVENTION,  
PREVALENCE OF OBESITY AMONG CHILDREN AND ADOLESCENTS: UNITED STATES, TRENDS 1963–  
1965 THROUGH 2007–2008, at 5 (2010), <https://goo.gl/6afktw>.

27 <sup>21</sup> CHERYL D. FRYAR, MARGARET D. CARROLL & CYNTHIA L. OGDEN, CTRS. FOR DISEASE CONTROL  
28 & PREVENTION, PREVALENCE OF OVERWEIGHT, OBESITY, AND EXTREME OBESITY AMONG ADULTS:  
UNITED STATES, 1960–1962 THROUGH 2011–2012, at tbl. 2 (2014), <http://goo.gl/dc2UHy>.

1           38.     Fifty-five percent (55%) of adult Californians are estimated to have diagnosed  
2 diabetes, undiagnosed diabetes, or pre-diabetes.<sup>22</sup>

3           39.     Forty-six percent (46%) of adults in the United States have pre-diabetes or  
4 diabetes.<sup>23</sup>

5           40.     Estimates on the annual cost of medical care and premature mortality attributable  
6 to the consumption of sugar-sweetened beverages are astronomical. For example, in New York  
7 City alone, the figure is estimated at between \$16.4 billion and \$17.96 billion.<sup>24</sup>

8     **II.     DEFENDANTS' FALSE PROMISES AND MISREPRESENTATIONS**

9           41.     In 2012, faced with an established and growing body of scientific research linking  
10 its products to obesity, type 2 diabetes, and cardiovascular disease, Coca-Cola and the ABA  
11 ramped up their campaign of misrepresentation and deception.

12          42.     Around the same time, various other city, county, and state regulators, as well as  
13 foreign governments, were openly discussing a variety of measures intended to address the  
14 epidemics of obesity, diabetes, and cardiovascular disease, and consumer misperceptions of  
15 sugar-sweetened beverages and their potential for harm.

16          43.     To combat this perceived threat to the security of the company's products and  
17 corporate profitability, Coca-Cola executives embarked on an intensive public speaking and  
18 marketing campaign in which they knowingly made material misrepresentations and omissions  
19 to the public and, upon information and belief, to various governmental entities tasked with  
20 protecting the public health, about the health consequences of consuming their sugar-sweetened  
21 beverage products.

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24 <sup>22</sup> SUSAN H. BABEY ET AL., UCLA CTR. FOR HEALTH POLICY RESEARCH, PREDIABETES IN CALIFORNIA: NEARLY HALF OF CALIFORNIA ADULTS ON PATH TO  
25 DIABETES 1 (2016), <https://goo.gl/f3NKqI>.

26 <sup>23</sup> NATIONAL DIABETES STATICS REPORT OF THE CDC (2014),  
27 <https://www.cdc.gov/diabetes/pubs/statsreport14/national-diabetes-report-web.pdf>.

28 <sup>24</sup> Shi-Ling Hsu, *A Cost-Benefit Analysis of Sugary Drink Regulation in New York City*, 10 J. FOOD  
L. & POL'Y 73, 103 tbl. 12 (2014).

1           44.     In particular, Coca-Cola falsely propounded that sugar-sweetened beverages are  
2 not linked to obesity, type 2 diabetes, or cardiovascular disease.

3           45.     As part of this misrepresentation, Coca-Cola executives and agents misleadingly  
4 sought to divert focus from sugar-sweetened beverage consumption to a purported lack of  
5 exercise as the explanation for the rise in obesity-related chronic conditions, despite the fact that  
6 they knew this explanation was not scientifically sound. To do this, Coca-Cola employed, and  
7 together with the American Beverage Association continues to employ, various euphemisms like  
8 “balance,” “calories in, calories out,” and “mixify.”

9           46.     Defendants have made these representations in the face of an overwhelming body  
10 of evidence establishing that sugar-sweetened beverages are linked to obesity, diabetes, and  
11 cardiovascular disease, and that exercise alone—particularly of the type promoted by  
12 Defendants—does not protect consumers from these harms.

13           47.     Defendants continue to deny that sugar-sweetened beverages are linked to  
14 obesity, diabetes type-2, and cardiovascular disease, and continue to misrepresent the science on  
15 sugar-sweetened beverages despite widespread agreement in the scientific and medical  
16 communities that sugar-sweetened beverages are a primary cause of obesity, type 2 diabetes, and  
17 cardiovascular disease.

18           48.     In addition to engaging in this deceptive campaign to promote false facts to  
19 consumers, Coca-Cola also took the following actions to respond to the growing scientific  
20 evidence linking consumption of its products to obesity, type 2 diabetes, and cardiovascular  
21 disease: (A) it secretly funded and publicly promoted biased scientific research, and intentionally  
22 mischaracterized objective scientific research on sugar-sweetened-beverage-consumption; (B) it  
23 funded and worked with the American Beverage Association to organize expensive initiatives  
24 that promoted exercise, or “balance,” in California, across the United States, and globally, as an  
25 alternative to reducing consumption of sugar-sweetened beverages; and (C) it ran false and  
26 misleading advertising campaigns.

27  
28

1           **A.       False Representations to Consumers by Coca-Cola and Its Front Groups**

2           49.       Faced with a growing scientific consensus linking its products to obesity, type 2  
3 diabetes, and cardiovascular disease, Coca-Cola’s top scientists and executives have  
4 unambiguously pledged and represented to the public that sugar-sweetened beverage  
5 consumption is not linked to obesity, type 2 diabetes, or cardiovascular disease. Coca-Cola’s  
6 representatives have done so despite actual knowledge of facts to the contrary.

7           50.       Coca-Cola knew or should have known that consumers (and regulatory agencies  
8 responsible for protecting their health) would consider the Coca-Cola’s representations material  
9 to their decisions whether to purchase Coca-Cola’s sugar-sweetened beverages, decisions that  
10 consumers otherwise would have modified had Coca-Cola been truthful in its representations and  
11 its public pledges about promoting unbiased science.

12           51.       Coca-Cola’s Senior Vice President, Katie Bayne, has repeatedly been quoted  
13 stating that “[t]here is no scientific evidence that connects sugary beverages to obesity.”<sup>25</sup>

14           52.       Coca-Cola’s former Chairman and Chief Executive Officer, Douglas Ivester, has  
15 made similar high publicity misrepresentations, such as that “Coca-Cola is an excellent  
16 complement to the habits of a healthy life.”<sup>26</sup>

17           53.       Coca-Cola also funded “front” groups, such as the Global Energy Balance  
18 Network (“GEBN”) and the European Hydration Institute (“EHI”), that are presented to the  
19 public as disinterested research entities but are or were actually Coca-Cola-funded and used by  
20 Coca-Cola to more effectively misrepresent, suppress, and confuse the facts about sugar-  
21 sweetened beverages and their health dangers.

22           54.       Dr. Steven Blair, the vice president of GEBN, which claimed to fund unbiased  
23 research into causes of obesity, put it this way: “Most of the focus in the popular media and the  
24 scientific press . . . blames . . . sugary drinks [for the obesity epidemic], and there is really

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26 <sup>25</sup> Bruce Horovitz, *Coke Says Obesity Grew as Sugar Drink Consumption Fell*, USA TODAY (June 7,  
27 2012), <http://goo.gl/w0jFU2> (statement by Coke executive Katie Bayne).

28 <sup>26</sup> *The Unhappy Truth About Soda*, CTR. FOR SCI. IN THE PUB. INTEREST, <http://www.therealbears.org/>  
(last visited Sept. 16, 2016).

1 virtually no compelling evidence that that, in fact, is the cause. Those of us interested in science,  
2 public health, medicine, we have to learn how to get the right information out there.”<sup>27</sup>

3 55. In 2015, claiming to be “the voice of science,” GEBN touted “strong evidence”  
4 that the key to preventing weight gain is not reducing sugar-sweetened beverage intake, “but  
5 maintaining an active lifestyle and eating more calories.”<sup>28</sup>

6 56. EHI touts the same message in Europe.<sup>29</sup> Notably, like GEBN, EHI professes  
7 independence.<sup>30</sup> However, Coca-Cola co-founded EHI, and its Director, Dr. Jane Holdsworth, is  
8 a paid Coca-Cola consultant.<sup>31</sup>

9 57. Whether through GEBN, or various universities, Coca-Cola spent approximately  
10 \$120 million, between 2010–2015 alone, surreptitiously funding various research and programs  
11 intending to confuse and misrepresent the science on the link between sugar-sweetened  
12 beverages and obesity, type 2 diabetes, and cardiovascular disease.<sup>32</sup>

13 58. An analysis of beverage studies published in PLOS Medicine found that those  
14 funded by Coca-Cola, PepsiCo, and the American Beverage Association were five times more  
15 likely to find no link between sugar-sweetened beverages and obesity than studies whose authors  
16 reported no financial conflicts.<sup>33</sup> A recent study found by Dr. Schillinger of the University of  
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18 <sup>27</sup> CrossFit, *Dr. Steven Blair of Coca-Cola and ACSM’s Global Energy Balance Network*,  
19 YOUTUBE (Sept. 10, 2015), <https://goo.gl/h14Yq8>.

20 <sup>28</sup> Anahad O’Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad*  
21 *Diets*, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfrg7> (quoting GEBN’s now-discontinued  
22 website). *See also* Anahad O’Connor, *Coke’s Chief Scientist, Who Orchestrated Obesity*  
23 *Research, Is Leaving*, N.Y. TIMES (Nov. 24, 2015), <http://goo.gl/u33ZNF> (while Coca-Cola said  
24 it had no influence on GEBN, “reports show that Dr. Applebaum and other executives at Coke  
25 helped pick the group’s leaders, create its mission statement and design its website”).

26 <sup>29</sup> EUROPEAN HYDRATION INST., <http://goo.gl/JEKIb> (last visited Sept. 15, 2016).

27 <sup>30</sup> “The members of the Science Advisory Board of the EHI do not have any conflicts of interest with  
28 any commercial organization.” *Id.* (quote de-italicized).

29 <sup>31</sup> *What Is the European Hydration Institute?*, EUROPEAN HYDRATION INST., <http://goo.gl/TGOr6W>  
30 (last modified June 14, 2016; last visited Sept. 16, 2016).

31 <sup>32</sup> Anahad O’Connor, *Coke Discloses Millions in Grants for Health Research and Community*  
32 *Programs*, N.Y. TIMES (Sept. 22, 2015), <http://goo.gl/hK48HC>.

33 <sup>33</sup> Anahad O’Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad*  
34 *Diets*, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfrg7> (referencing Maira Bes-Rastrollo et al.,  
35 *Financial Conflicts of Interest and Reporting Bias Regarding the Association Between Sugar-*

1 California San Francisco's Division of General Internal Medicine and Center for Vulnerable  
2 Populations, found an even greater impact. He found that 26 of 26 "negative" studies (finding no  
3 link between SSBs and obesity), or 100%, received funding from the soda industry, and only  
4 one of 34 "positive" studies received industry funding. His research led him to conclude that  
5 "[t]he SSB industry appears to be manipulating contemporary scientific processes to create  
6 controversy and advance their business interests at the expense of the public's health."<sup>34</sup>

7 59. Just as the tobacco industry formed the Tobacco Industry Research Committee in  
8 1953 to respond to scientific evidence linking smoking to lung cancer, Coca-Cola's strategy was  
9 one of "cultivating relationships" with scientists as a way to "balance the debate" on sugar-  
10 sweetened beverages.<sup>35</sup> Dr. Rhona Applebaum, Coca-Cola's "Chief Science and Health Officer"  
11 was put in charge of locating such scientists.

12 60. Applebaum funded Dr. James Hill, of the University of Colorado, for example,  
13 after he explicitly proposed publishing research that would help Coca-Cola fend off criticism  
14 about its products by shifting the blame for obesity to lack of physical activity. "I . . . could  
15 provide a strong rationale for why a company selling sugar water should focus on promoting  
16 physical activity. This would be a very large and expensive study, but could be a game changer.  
17 We need this study to be done."<sup>36</sup>

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22 *Sweetened Beverages and Weight Gain*, 10 PLOS MEDICINE e1001578 (2013)). Another analysis  
23 found that beverage industry-funding studies are as much as eight times more likely to be favorable  
24 to industry's marketing interests. Willett Report, *supra* note 8, at ¶ 27 (citing Leonard I. Lesser et  
al., *Relationship Between Funding Source and Conclusion Among Nutrition-Related Scientific*  
*Articles*, 4 PLOS MEDICINE e5 (2007)).

25 <sup>34</sup> Dr. Dean Schillinger, *Do Sugar-Sweetened Beverages Cause Obesity and Diabetes? Industry*  
26 *and the Manufacture of Scientific Controversy*, ANN AM. MEDICINE (NOV. 2016),  
<https://www.ncbi.nlm.nih.gov/pubmed/27802504>.

27 <sup>35</sup> Anahad O'Connor, *Coke's Chief Scientist, Who Orchestrated Obesity Research, Is Leaving*, N.Y.  
TIMES (Nov. 24, 2015), <http://goo.gl/u33ZNF>.

28 <sup>36</sup> *Id.*

1           61.     Dr. Hill further added, “I want to help your company avoid the image of being a  
2 problem in people’s lives and back to being a company that brings important and fun things to  
3 them.”<sup>37</sup>

4           62.     Coca-Cola’s Chief Executive Officer, Muhtar Kent, directed Dr. Applebaum to  
5 seek to persuade CBS to invite Dr. Hill on “CBS This Morning,” so as to have him help shape  
6 media coverage about sugar-sweetened beverages.<sup>38</sup>

7           63.     Meanwhile, Dr. Applebaum and various scientists misrepresented to the public  
8 and consumers that the science Coca-Cola was funding constituted totally independent research  
9 efforts with completely unrestricted funding.

10          64.     Similarly, James Quincey, who is slated to become Defendant’s CEO as of May  
11 2017, has repeatedly publicized that Coca-Cola’s role is to “get information [about obesity and  
12 SSBs] into people’s hands” to empower their “choices.” Put another way, that Defendant is “not  
13 trying to hide the information,” instead pledging that “we are focused on getting the information  
14 out there.” Contemporaneously, he shifted responsibility for the obesity and diabetes epidemics  
15 away from sugar-sweetened beverages and, explicitly, to a lack of activity, claiming that sugar-  
16 sweetened beverages constitute less than 2% of all calories, and by implication, bear only a tiny  
17 fraction of responsibility for the obesity epidemic.<sup>39</sup>

18          65.     Coca-Cola’s representations as to the state of the science, and about sponsoring  
19 independent and objective research and “bringing the facts to light,” were false and deceptive.  
20 They were made to gain the trust of the consuming public and to cast doubt on the substantial,  
21 credible science linking Coca-Cola’s products to obesity, diabetes, and cardiovascular disease.

22          66.     Likewise, Coca-Cola funded and guided industry groups in promoting its  
23 deceptive campaign.

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26 <sup>37</sup> *Id.*

27 <sup>38</sup> *Id.*

28 <sup>39</sup> BBC Interview by Jeremy Paxman with James Quincey, in London, England (Nov. 27, 2013),  
<https://www.youtube.com/watch?v=DWLQaz8nhQw> (last visited Jan. 4, 2017).

67. Defendant ABA, for example, is a trade association of soda manufacturers financed extensively by Coca-Cola. Sandy Douglas, President of Coca-Cola North America, sits on the board of directors of the ABA, along with *six other* Coca-Cola executives and affiliate executives, including Claude Nielsen of Coca-Cola Bottling Company United, who is also an ex-officio officer.<sup>40</sup>

68. Beyond its management function, Coca-Cola principally funds the ABA, treating it as an arm of Coke's public relations enterprise. Coca-Cola executives commonly refer to "working an issue through" the ABA.

69. As of September 2016, the ABA's website was replete with misleading and materially incomplete representations about the link between sugar-sweetened beverages and obesity-related chronic diseases. For example, the following omits entirely the prominent role played by routine sugar-sweetened beverage consumption in the rise of obesity and related chronic diseases:

Soda is a hot topic. And the conversation is full of opinions and myths, but not enough facts. America's beverage companies created this site to clear a few things up about the products we make. So read on. Learn. And share the clarity.

\* \* \*

**Fact:** Obesity. Obesity is a complex condition, that can't be boiled down to one specific product or ingredient. Many health organizations, including the Mayo Clinic, have found multiple risk factors including genetics, ages, and even lack of sleep.

\* \* \*

Focusing on [soda]—ignores the bigger problem and doesn't offer real solutions.<sup>41</sup>

<sup>40</sup> *Board of Directors*, AM. BEVERAGE ASS'N, <https://goo.gl/8lo6w> (last visited Sept. 16, 2016).

<sup>41</sup> Am. Beverage Ass'n, *Home*, LET'S CLEAR IT UP, <http://goo.gl/Ft8VNp> (last visited Sept. 16, 2016); Am. Beverage Ass'n, *Health*, LET'S CLEAR IT UP, <http://goo.gl/NZCwGy> (last visited Sept. 16, 2016); Am. Beverage Ass'n, *Beverages*, LET'S CLEAR IT UP, <http://goo.gl/D1o8EI> (last visited Sept. 16, 2016).



70. Other red herrings advanced by the ABA include discussions of high fructose corn syrup (“HFCS”)—which is irrelevant because whether sugar-sweetened beverages are sweetened with HFCS or traditional sugar, their link with disease is established:

Myth: High Fructose Corn Syrup (HFCS) causes obesity and diabetes.

Fact: Actually, the American Medical Association has concluded that HFCS . . . is not a unique contributor to either obesity or type 2 diabetes. In fact, HFCS is so similar to sucrose (table sugar) that your body can’t tell the difference between the two and processes both in the same way.<sup>42</sup>

71. ABA press releases follow the same approach, including:

- “You may have read articles recently suggesting that there is something unique about soda when it comes to diabetes. Yes, diabetes. It’s always something if you’re reading the headlines. But if you dig deep enough, there’s no ‘there’ there”;<sup>43</sup>
- “[T]here’s nothing unique about beverage calories when it comes to obesity or any other health condition. Sadly, however, the days of simply enjoying a refreshing beverage are under assault – that is, if you choose to listen to our critics”;<sup>44</sup>
- “Sugar isn’t the enemy, the problem is calories. . . . demonizing [] sugar isn’t going to improve public health”;<sup>45</sup>
- “[T]he attack on added sugars is not founded on the totality of scientific evidence. . . . Like past false food scares, the anti-soda campaign misleads people with unsound science”;<sup>46</sup>

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<sup>42</sup> Am. Beverage Ass’n, *Obesity*, LET’S CLEAR IT UP, <http://goo.gl/AAUPzD> (last visited Sept. 16, 2016).

<sup>43</sup> *Cut Through the Headlines and Get the Facts*, AM. BEVERAGE ASS’N (Nov. 8, 2013), <http://goo.gl/slW3eK> (last visited Sept. 16, 2016).

<sup>44</sup> *Simply Soda*. . . , AM. BEVERAGE ASS’N (June 11, 2012), <http://goo.gl/JstcDx> (last visited Sept. 16, 2016).

<sup>45</sup> *Experts: Blaming Sugar Won’t Yield Results*, AM. BEVERAGE ASS’N (Oct. 1, 2015), <http://goo.gl/19E0Gm> (quoting, in part, Dr. John L. Sievenpiper) (last visited Sept. 16, 2016).

- “You may have seen some attention to research presented at an American Heart Association meeting that suggests that drinking two or more sugar-sweetened beverages per day increases the risk of cardiovascular disease among women. It’s always worth questioning a news report on a study if it only presents one side”;<sup>47</sup>
- “In 1984, President Ronald Reagan designated July as National Ice Cream Month, recognizing ice cream as a fun and nutritious food that 90% of our population enjoys. . . . [W]e want to remind you to grab a beverage to go with your ice cream. It’s important to stay hydrated, especially in these warm summer months”;<sup>48</sup>
- “Despite what you may read in frequent stories that come out in the media, sugar-sweetened beverages are not a unique driver of public health concerns such as obesity and diabetes. Simply put, it is wrong to say beverages cause disease”;<sup>49</sup>
- “[A]ll calories are the same regardless of food source. . . . 100 calories from a donut or a yogurt is still 100 calories”;<sup>50</sup>
- “Recently we’ve seen some food activists allege that sugar-sweetened beverages ‘cause’ obesity, diabetes and a host of other adverse health

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<sup>46</sup> *The Added Sugar Fantasy*, AM. BEVERAGE ASS’N (June 17, 2015), <http://goo.gl/JngEQA> (last visited Sept. 16, 2016).

<sup>47</sup> *Here We Go Again . . .*, AM. BEVERAGE ASS’N (Nov. 14, 2011), <http://goo.gl/0Ywg96> (last visited Sept. 16, 2016).

<sup>48</sup> *Did You Get Your Ice Cream*, AM. BEVERAGE ASS’N (July 26, 2013), <http://goo.gl/Y1emwi> (last visited Sept. 16, 2016).

<sup>49</sup> *Taking a Closer Look at Recent Studies on Diabetes*, AM. BEVERAGE ASS’N (July 23, 2015), <http://goo.gl/JQtXgK> (last visited Sept. 16, 2016).

<sup>50</sup> *Setting the Record Straight on Calories*, AM. BEVERAGE ASS’N (Sept. 16, 2015), <http://goo.gl/0HVYB3> (quoting Megan Meyer, PhD, program manager of health and wellness communications at the Int’l Food Info. Council—a Coca-Cola-funded group) (last visited Sept. 16, 2016).

1 conditions. Obviously they are hoping you never look at the science behind  
2 their claims. Because it doesn't exist";<sup>51</sup>

- 3 • "According to leading health organizations, beverage consumption is not a  
4 known risk factor for type 2 diabetes . . .";<sup>52</sup> or
- 5 • "Overconsumption of anything (even water) can be risky."<sup>53</sup>

6 72. The ABA's Americans for Food and Beverage Choice regularly pushes  
7 misrepresentations through multiple media outlets as well. Such as statements that:

- 8 • "Managing diabetes is all about balancing what you eat with your activity  
9 level. . . . A daily soda is fine";<sup>54</sup>
- 10 • "[E]liminating soda and sugary beverages from your diet will not save your  
11 health any more than over-emphasizing fruits and vegetables;"<sup>55</sup> and
- 12 • "The same holds true for headlines that say drinking soda can cause obesity,  
13 type 2 diabetes, or heart disease. What's missing from those unfounded  
14 statements is any evidence from randomized clinical trials."<sup>56</sup>

15 73. Coca-Cola also pays individual health professionals to promote sugar-sweetened  
16 beverages. According to Coca-Cola spokesperson Ben Sheidler, Coca-Cola "ha[s] a network of  
17 dietitians we work with." In February of 2015, these dietitians wrote numerous online pieces for  
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19  
20

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21 <sup>51</sup> *Clearing up the Conversation on Beverages*, AM. BEVERAGE ASS'N (June 24, 2015),  
22 <http://goo.gl/tkL2Se> (last visited Sept. 16, 2016).

23 <sup>52</sup> *Beverage Industry Responds to British Medical Journal Paper on Diabetes*, AM. BEVERAGE ASS'N  
(July 22, 2015), [goo.gl/mwdZYU](http://goo.gl/mwdZYU) (last visited Jan. 13, 2017).

24 <sup>53</sup> *Overconsumption of Anything (Even Water) Can Be Risky*, AM. BEVERAGE ASS'N (Aug. 3, 2015),  
25 <http://goo.gl/SvKeb2> (last visited Sept. 16, 2016).

26 <sup>54</sup> Amy Myrdal Miller, *You Can't Eat That! And Other Bad Advice*, AMS. FOR FOOD & BEVERAGE  
CHOICE (Apr. 25, 2016), <http://goo.gl/htslCQ> (last visited Sept. 16, 2016).

27 <sup>55</sup> Kim Galeaz, *Veggie Halos and Soda Demons*, AMS. FOR FOOD & BEVERAGE CHOICE (Jan. 12,  
2015), <https://goo.gl/t5xdD2> (last visited Jan. 13, 2017).

28 <sup>56</sup> Robyn Flipse, *Bacon, Soda, and Longevity – What's the Connection*, AMS. FOR FOOD &  
BEVERAGE CHOICE (Aug. 24, 2015), <http://goo.gl/bH58TU> (last visited Sept. 16, 2016).

American Heart Month, each including the suggestion that a soda could be a healthy snack, “like . . . packs of almonds.”<sup>57</sup>

74. While designed to look like regular stories, the pieces were sponsored by Coca-Cola, and ran in 1,000 or more news outlets. Sometimes the authors indicated that they were “consultants,” other times not—but rarely if ever did any disclaimer make clear that Coca-Cola paid for the columns even though such nutritionists presented themselves as trustworthy authorities.<sup>58</sup>

#### **B. Balance & Hydration: Coca-Cola’s Deceptive Advertising Campaign**

75. As part of its concerted campaign to shift attention away from the substantial, credible science linking sugar-sweetened beverages to obesity, diabetes, and cardiovascular disease, Coca-Cola also developed a direct advertising campaign that falsely and misleadingly promoted to consumers that they could “balance” their consumption of sugar-sweetened beverages with exercise and through careful monitoring of “calories-in, calories-out.”

76. Directly through its own advertising and through the ABA, Coca-Cola falsely and misleadingly advertised that balance—of calories in and calories out—enables healthful consumption of sugar-sweetened beverages and prevents obesity.

77. However, the scientific consensus is that exercise, especially light exercise like the “75 seconds of laughing out loud” featured in one ad by Coca-Cola,<sup>59</sup> cannot offset the negative health effects, including obesity and related chronic diseases, of drinking sugar-sweetened beverages.

78. While health authorities such as the federal government’s 2008 Physical Activity Guidelines encourage people to exercise, these same Guidelines acknowledge that “the contribution that physical activity makes to weight loss and weight stability is relatively small.”<sup>60</sup>

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<sup>57</sup> Candice Choi, *Coca-Cola Teams up with Nutritionists to Push Coke as Healthy Treat*, FOOD MANUFACTURING (Mar. 16, 2015), <http://goo.gl/CnWLgA>.

<sup>58</sup> *Id.*

<sup>59</sup> See The Coca-Cola Co., *Be OK*, YOUTUBE (Jan. 16, 2013), <https://goo.gl/12e520> (video advertisement by Coke) (last visited Sept. 16, 2016).

<sup>60</sup> See, e.g., Guidelines, [https://health.gov/paguidelines/report/G4\\_energy.aspx#q1c](https://health.gov/paguidelines/report/G4_energy.aspx#q1c).

1           79.     The tiny expenditures of exercise suggested in Coca-Cola ads pale in comparison  
2 to the quantity of exercise needed to redress excess calories from sugar-sweetened beverages.  
3 Furthermore studies find that even intensive exercise programs often fail to lead to expected  
4 weight loss.<sup>61</sup>

5           80.     As Dr. Margaret Chan, Director-General of the World Health Organization, told  
6 the annual meeting of the National Academy of Medicine in October 2016:

7                   When crafting preventive strategies, government officials must recognize that the  
8                   widespread occurrence of obesity and diabetes throughout a population is not a  
9                   failure of individual willpower to resist fats and sweets or exercise more. It is a  
10                  failure of political will to take on powerful economic operators, like the food and  
                    soda industries.<sup>62</sup>

11           81.     Coca-Cola's advertising campaigns, however, represent otherwise.<sup>63</sup>

12           82.     For example, the "Be Ok" advertising campaign, which ran extensively in the  
13 United States, including during the popular television show American Idol and the Super Bowl,  
14 implied that light activities—always undertaken by trim and fit models, instead of overweight,  
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16 <sup>61</sup> See, e.g., Timothy S. Church et al., *Changes in Weight, Waist Circumference and Compensatory*  
17 *Responses with Different Doses of Exercise Among Sedentary, Overweight Postmenopausal Women*,  
18 4 PLOS ONE e4515 (2009) (increased food intake because of heightened hunger); Emily J.  
19 Dhurandhar et al., *Predicting Adult Weight Change in the Real World*, 39 INT'L J. OBESITY  
20 (LONDON) 1181 (2015) (metabolic compensation via slowing of basal rate); Edward L. Melanson et  
21 al., *Resistance to Exercise-Induced Weight Loss: Compensatory Behavioral Adaptations*, 45 MED. &  
22 SCI. SPORTS & EXERCISE 1600 (2013) (compensatory behaviors like resting post exercise); Herman  
23 Pontzer et al., *Constrained Total Energy Expenditure and Metabolic Adaptation to Physical Activity*  
24 *in Adult Humans*, 26 CURRENT BIOLOGY 410 (2016) (energy expenditure ceiling); K. A. Shaw et al.,  
25 *Exercise for Overweight or Obesity*, Cochrane Libr., Oct. 18, 2006 (meta-analysis of studies  
26 showing exercise does not equate with weight loss); D. M. Thomas et al., *Why Do Individuals Not*  
27 *Lose More Weight from an Exercise Intervention at a Defined Dose? An Energy Balance Analysis*,  
28 13 OBESITY REV. 835 (2012) (overestimation of how much energy exercise burned versus calories  
taken in); Klaas R. Westerterp, *Physical Activity and Physical Activity Induced Energy Expenditure*  
*in Humans: Measurement, Determinants, and Effects*, 4 FRONTIERS PHYSIOLOGY 90 (2013) (exercise  
accounts for small portion of daily calorie burn (10-30%) whereas calories in accounts for 100% of  
energy intake of the body).

<sup>62</sup> Dr. Margaret Chan, *Obesity and diabetes: the slow-motion disaster*, KEYNOTE ADDRESS 47<sup>TH</sup> MTG  
OF THE NATIONAL ACADEMY OF MEDICINE, [HTTP://WWW.WHO.INT/DG/SPEECHES/2016/OBESITY-  
DIABETES-DISASTER/EN/](http://www.who.int/dg/speeches/2016/obesity-diabetes-disaster/en/).

<sup>63</sup> Tiffany Hsu, *Coca-Cola Takes on Obesity Issue in Prime-Time Ad Campaign*, L.A. TIMES (Jan.  
14, 2013), <http://goo.gl/HMDF7F>; *Coca-Cola Ad Pushes Exercise, Soft Drink Moderation*, AJC.COM  
(Jan. 14, 2013); <http://goo.gl/OOOP4m>.

obese or diabetic consumers—like laughing for 75 seconds, or doing a victory jig in the bowling alley, or 15 minutes of happy dancing—would offset the harmful health consequences of consuming sugar-sweetened beverages. *See* Illustrations 1–3.

### Illustrations 1–3

“A 12oz can of Coke = 140 calories. There are many ways to burn those calories through EXTRA physical activity and have fun while doing so. Balance your lifestyle. **Be OK. Open happiness.** Visit <http://comingtogether.com>.”



Coca-Cola: 'Be OK' 139 calories advert



## Be OK



The Coca-Cola Co. ✓

Subscribe 11,180

110,554



## Coca-Cola: 'Be OK' 139 calories advert

83. Coca-Cola's claims are prolific that avoiding obesity and other bad health outcomes is substantially about "balance," or "energy in and energy out."

84. Coca-Cola has extensively promoted the claim that “[s]ugary drinks can be a part of any diet as long as your calories in balance with the calories out.”<sup>64</sup>

85. Likewise, the “Mixify” multi-platform advertising campaign, sponsored by Coca-Cola, the American Beverage Association, and other sugar-sweetened beverage producers, pitches kids on the notion that they should not be concerned about added sugar or calories. It encourages them to consume sugar-sweetened beverages and then exercise more.<sup>65</sup> Advertisements sponsored by Coca-Cola through the Mixify campaign advise kids, “Just finished an afternoon of Frisbee? Maybe you’ve earned a little more [soda].”<sup>66</sup>

86. Cola-Cola’s “Coming Together” advertising campaign promotes a related deception. It proclaims, “All calories count. No matter where they come from including Coca-Cola and everything else with calories.”<sup>67</sup> This statement is misleading given the health consequences associated with drinking sugar-sweetened beverages, and their lack of nutritional value.

87. As Professor Ruth Fagan, Wagley Professor of Biomedical Ethics and Director of the Johns Hopkins Berman Institute of Bioethics, said of the Coming Together campaign,

For Coca-Cola to suggest that all calories are equal flies in the face of reality. . . . Coca-Cola wants us to ignore the considerable research confirming that sugary soda is a major contributor to obesity, and that it has no nutritional value.<sup>68</sup>

88. The Coming Together campaign also flies in the face of the CDC’s conclusion that all calories are not equal because, among other things, “individuals may fail to compensate

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<sup>64</sup> *Coke Executive Answers Questions About Sugary Drinks*, USA TODAY (June 7, 2012), <http://goo.gl/z1SPqh> (statement made by Coke executive Katie Bayne during interview).

<sup>65</sup> *Find Your Mixify*, MIXIFY, <http://goo.gl/6U05e7> (last visited Sept. 15, 2016).

<sup>66</sup> *MyMixify*, *MyMixify*, YOUTUBE (Sept. 23, 2014), <https://goo.gl/8azpWA> (last visited Sept. 16, 2016).

<sup>67</sup> Isabela Carvalho Santos, *Coming Together The Real Ad from Coca Cola*, YOUTUBE (Oct. 25, 2013), <https://goo.gl/fZkvRO> (video advertisement by Coke) (last visited Sept. 16, 2016).

<sup>68</sup> Ruth Faden, *Coke’s Unconscionable New Ad*, THE ATLANTIC (Jan. 25, 2013), <http://goo.gl/eGYEgI>.



1 for . . . calories consumed as liquid.”<sup>69</sup> More, some calories have nutritional value, and others  
2 are neutral or adverse nutritionally; this distinction is the rationale for Dietary Guidelines.

3 89. As part of Coca-Cola’s insistence on refocusing the sugar-sweetened beverage  
4 conversation around exercise and balance, in 2014, it spent \$22 million on “physical activity”  
5 programs internationally,<sup>70</sup> in which it also advertised its products.<sup>71</sup> See Illustrations 4 & 5.<sup>72</sup>

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16 <sup>69</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, THE CDC GUIDE TO STRATEGIES FOR REDUCING THE  
17 CONSUMPTION OF SUGAR-SWEETENED BEVERAGES 4 (2010), <http://goo.gl/OWgFs>; accord Robin P.  
18 Bolton et al., *The Role of Dietary Fiber in Satiety, Glucose, and Insulin: Studies with Fruit and Fruit*  
19 *Juice*, 34 AM. J. CLINICAL NUTRITION 211 (1981); Diane M. DellaValle et al., *Does the Consumption*  
20 *of Caloric and Non-Caloric Beverages with a Meal Affect Energy Intake?*, 44 APPETITE 187 (2005);  
21 D. P. DiMiglio & R. D. Mattes, *Liquid Versus Solid Carbohydrate: Effects on Food Intake and*  
22 *Body Weight*, 24 INT’L J. OBESITY 794 (2000); G. B. Haber et al., *Depletion and Disruption of*  
23 *Dietary Fibre: Effects on Satiety, Plasma-Glucose, and Serum-Insulin*, 310 LANCET 679 (1977);  
24 Jessica N. Kuzma et al., *No Difference in Ad Libitum Energy Intake in Healthy Men and Women*  
25 *Consuming Beverages Sweetened with Fructose, Glucose, or High-Fructose Corn Syrup: A*  
26 *Randomized Trial*, 102 AM. J. CLINICAL NUTRITION 1373 (2015); R. D. Mattes, *Beverages and*  
27 *Positive Energy Balance: The Menace Is the Medium*, 30 INT’L J. OBESITY S60 (2006); D. M.  
28 Mourao et al., *Effects of Food Form on Appetite and Energy Intake in Lean and Obese Young*  
*Adults*, 31 INT’L J. OBESITY 1688 (2007); An Pan & Frank B. Hu, *Effects of Carbohydrates on*  
*Satiety: Differences Between Liquid and Solid Food*, 14 CURRENT OPINION CLINICAL NUTRITION &  
METABOLIC CARE 385 (2011).

25 <sup>70</sup> THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 10 (2015), <http://goo.gl/E4N5gM> (last  
visited Sept. 16, 2016).

26 <sup>71</sup> Notably too, Coke’s extravagant spending belies Coke’s Forward Looking Statements, which  
27 clearly minimize the impact of “obesity concerns.” *E.g.*, The Coca-Cola Co., Current Report (Form  
10-K), at 38 (Feb. 9, 2016).

28 <sup>72</sup> THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 8, 11 (2015), <http://goo.gl/E4N5gM>  
(last visited Sept. 16, 2016).

Illustrations 4 & 5



90. Beginning in May 2013, Coca-Cola introduced its “Get the Ball Rolling” program which hosted events it claimed were aimed at “bringing together happiness and movement in a way that only The Coca-Cola company can.”<sup>73</sup> According to a story posted on the company’s website, the program’s activities “build on our Company’s global commitments to help fight obesity and be part of the solution,” and involved seeking partners “to help address obesity in every community we serve.”<sup>74</sup> In its first year of operation, the company co-hosted “Get the Ball Rolling” events (targeted at children) with organizations such as the Boys & Girls Clubs of America, National Foundation for Governors’ Fitness Councils, NASCAR, and many others.<sup>75</sup> Coca-Cola continues to fund and promote the program.

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<sup>73</sup> Stuart Cronauge, Coca-Cola USA Sets Goal To Inspire Americans To Rediscover The Joy Of Activity, COCA-COLA (May 13, 2013), <http://www.coca-colacompany.com/press-center/press-releases/coca-cola-gets-the-ball-rolling-for-a-fun-active-summer>.

<sup>74</sup> *Id.*

<sup>75</sup> Caren Pasquale Seckler, How Has Coca-Cola Inspired More Than 3 Million People To “Get The Ball Rolling”? COCA-COLA (Sept. 23, 2013), <http://www.coca-colacompany.com/coca-cola-unbottled/how-has-coca-cola-inspired-more-than-3-million-people-to-get-the-ball-rolling>.

1           91. Through the ABA, Coca-Cola also subsidized the 2016 Childhood Obesity  
2 Prevention Awards. These high-fanfare grants are given by the U.S. Conference of Mayors to  
3 six cities for their activity-focused nutrition programs.<sup>76</sup>

4           92. In widely promoting these exercise programs, Coca-Cola proclaimed that “[w]ell-  
5 being is integral part of our business—from the communities we serve to the people we refresh.  
6 Our well-being commitments serve as a guide for our global efforts . . . with an end goal to  
7 inspire happier, healthier lives.”<sup>77</sup>

8           93. Coca-Cola and the ABA also promoted a program called the “Balance Calories  
9 Initiatives,” which, according to a Coca-Cola press release, “encourages people to balance all of  
10 their calories – including beverages – with daily physical activity.”<sup>78</sup> Susan K. Neely, President  
11 and CEO of the ABA emphasized the collaborative nature of the project, noting that the common  
12 goal of “health and wellbeing of communities across the country” overrides the normally  
13 competitive nature of commercial interests, joining all the members of the Association.<sup>79</sup>

14           94. Coca-Cola paid nutritionists, too, to blog about balance and sugar-sweetened  
15 beverages as healthy snacks.<sup>80</sup>

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18 <sup>76</sup> U.S. Conference of Mayors, *Six Cities Share \$445,000 in Grants to Support Childhood*  
19 *Obesity Prevention Programs*, PR NEWswire (Jan. 21, 2016), <https://goo.gl/X4IpQ7>; Press  
20 Release, Am. Beverage Ass’n, *Six Cities Share \$445,000 in Grants to Support Childhood*  
21 *Obesity Prevention Programs* (Jan. 21, 2016), <https://goo.gl/nS7Tkb> (last visited Sept. 15, 2016);  
22 *see also* Press Release, Coca-Cola Co., *The Coca-Cola Foundation Awards \$8.1 in Third Quarter*  
23 *Benefitting 3.8 Million People Worldwide* (Oct. 18, 2013), <https://goo.gl/SZRYkE> (promoting  
24 Coca-Cola Foundation’s funding of foreign childhood obesity programs) (last visited Sept. 15,  
25 2016).

26 <sup>77</sup> THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 8 (2015), <http://goo.gl/E4N5gM> (last  
27 visited Sept. 16, 2016).

28 <sup>78</sup> Journey Staff, *Coca-Cola Joins America's Beverage Companies and the Alliance for a*  
*Healthier Generation in Landmark Partnership to Promote Healthy Lifestyles*, Coca-Cola (Sept.  
29 26, 2014), [http://www.coca-colacompany.com/coca-cola-unbottled-old/coca-cola-joins-](http://www.coca-colacompany.com/coca-cola-unbottled-old/coca-cola-joins-america-beverage-companies-and-the-alliance-for-a-healthier-generation-in-landmark-partnership-to-promote-healthy-lifestyles)  
30 [america-beverage-companies-and-the-alliance-for-a-healthier-generation-in-landmark-](http://www.coca-colacompany.com/coca-cola-unbottled-old/coca-cola-joins-america-beverage-companies-and-the-alliance-for-a-healthier-generation-in-landmark-partnership-to-promote-healthy-lifestyles)  
31 [partnership-to-promote-healthy-lifestyles](http://www.coca-colacompany.com/coca-cola-unbottled-old/coca-cola-joins-america-beverage-companies-and-the-alliance-for-a-healthier-generation-in-landmark-partnership-to-promote-healthy-lifestyles).

32 <sup>79</sup> *Id.*

33 <sup>80</sup> Candice Choi, *Coke as a Sensible Snack? Coca-Cola Works with Dieticians Who Suggest Cola*  
34 *As A Snack*, STAR TRIBUNE (Mar. 16, 2015), <https://goo.gl/2t44MM>.

1           95.       For example, in her list of “sensible snacks for any time of day,” Robyn Flipse  
2 equated Coca-Cola mini-cans with packs of almonds.<sup>81</sup> And in interviews, Dr. Rani Whitfield  
3 similarly promoted drinking Coca-Cola mini-cans as part of a healthy, balanced diet,  
4 commenting, “70 calories and my taste buds love it!”<sup>82</sup> In addition to deceiving on nutrition, Ms.  
5 Flipse also missed on figures: Mini-cans of Coca-Cola have 90 calories.

6           96.       To respond to the scientific consensus that sugar-sweetened beverages have no  
7 nutritional value, Coca-Cola made claims that its sugar-sweetened beverages aren’t “empty  
8 calories” but are sources of “essential hydration.”

9           97.       According to its Senior Vice President Katie Bayne, “What our drinks offer is  
10 hydration. That’s essential to the human body. We offer great taste and benefits whether it’s an  
11 uplift or carbohydrates or energy. We don’t believe in empty calories. We believe in  
12 hydration.”<sup>83</sup>

13           98.       Coca-Cola’s [now-departed] Chief Science and Health Officer, Rhona  
14 Applebaum, routinely made similar claims like, “We started with one beverage that I personally  
15 am very proud of. It’s safe, it hydrates, it’s enjoyable.”<sup>84</sup>

16           99.       Even Coca-Cola’s website promotes the “science” of hydration with links to  
17 “Food Insight” publications—“Your Nutrition and Food Safety Resource”—produced by the  
18 International Food Information Council Foundation (“IFIC”). These publications stress the  
19 importance of hydration “whether you’re an elite athlete . . . or more the spectator type,” though

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21 <sup>81</sup> Robyn Flipse, *Every Day Heart Health in February and Beyond*, NUTRITION COMMC’N SERVS.  
(Feb. 19, 2015), <https://goo.gl/Pu5q5W> (last visited Sept. 15, 2016).

22 <sup>82</sup> *Get Well Wednesday: Dr. Rani Whitfield Answers Your Questions About Prioritizing Health*,  
23 BlackAmericaWeb.com, <https://goo.gl/oAouCD> (last visited Sept. 15, 2016) (transcript of radio  
24 interview). Coca-Cola reported paying health professionals and scientific experts a total of \$2.3  
25 million for “travel grants, related expenses and professional fees” between 2010 and 2015. *List*  
*of Health Professionals and Scientific Experts*, THE COCA-COLA CO. (Mar. 24, 2016),  
<https://goo.gl/VRU3BW> (last visited Sept. 15, 2016).

26 <sup>83</sup> *Coke Executive Answers Questions About Sugary Drinks*, USA TODAY (June 7, 2012),  
<http://goo.gl/OWgFs> (statement made by Coke executive Katie Bayne during interview).

27 <sup>84</sup> Canadian Obesity-Network, *COS2013 Symposia - Coca Cola - Dr. Rhona Applebaum*, YOUTUBE  
28 (May 29, 2013), <https://goo.gl/I1SK6M> (comments made by Dr. Rhona Applebaum,  
during presentation at Canadian Obesity Network’s 2013 symposia) (17:55) (last visited Sept. 15,  
2016).

1 almost no Americans are under-hydrated. More, IFIC emphasizes that with respect to hydration,  
2 “the term ‘water’ can mean more than just plain drinking water. . . . It includes . . . beverages  
3 such as soft drinks . . . .”<sup>85</sup>

4 100. Coca-Cola financially supports the IFIC, but this is not indicated in IFIC  
5 publications.<sup>86</sup>

6 101. The reasonable implication of this Coca-Cola and Coca-Cola-sponsored message  
7 is that the “essential hydration,” as offered by sugar-sweetened beverages, is good for the body.

8 102. More than half of the US population drinks soda on a daily basis.<sup>87</sup> More than  
9 half of the world’s population has had a Coke.<sup>88</sup> But untold millions are unaware of the health  
10 consequences of frequent consumption of a product billed as “essential hydration.”

11 103. In fact, scientific consensus is that frequent hydration by way of sugar-sweetened  
12 beverages is linked to obesity, diabetes, cardiovascular disease, and other chronic diseases.  
13 These beverages are not “*essential*,” or even advisable, for the human body; they are antithetical  
14 to well-being of the body if consumed routinely.

15 **C. Advertising to Minors**

16 104. Despite a pledge not to do so,<sup>89</sup> Coca-Cola continues to target children with its  
17 advertising for sugar-sweetened beverages.

18 105. Advertising messages for sugar-sweetened beverages are all-pervasive, appearing  
19 on billboards, buses, trains, magazines, newspapers, twitter, BUZZFEED, etc.

20 106. The goal of Coca Cola’s advertising is to convey to young people that sugar-  
21 sweetened beverages are desirable, safe, healthy and prevalent in society.

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24 <sup>85</sup> INT’L FOOD INFO. COUNCIL FOUND., HYDRATION: DOES IT ALWAYS HAVE TO BE WATER?, at 1  
(2011), <https://goo.gl/95XDIB> (last visited Sept. 15, 2016).

25 <sup>86</sup> *See, e.g., id.*

26 <sup>87</sup> Willett Report, *supra* note 8, at ¶ 8.

27 <sup>88</sup> Muhtar Kent, *A Letter from Our Chairman and Chief Executive Officer*, THE COCA-COLA CO.  
(May 4, 2015), <http://goo.gl/yzdOHj>.

28 <sup>89</sup> *Responsible Marketing*, THE COCA-COLA CO. (Sept. 25, 2015), <https://goo.gl/pPZfr> (last  
visited Sept. 15, 2016).

1           107. Despite its pledge not to do so, Coca-Cola continues to target children with a  
2 material segment of its advertising. Like the tobacco industry, Coca Cola needs to replenish the  
3 ranks of its customers, and it tries to recruit them young.

4           108. To attract young consumers to their sugar-sweetened beverages, for example,  
5 Coca Cola has used cartoons, celebrities, over 300 apps, billboards at sponsored events, and  
6 otherwise has massively disseminated other consumer products branded with Coca-Cola. The  
7 advertising has been effective in attracting children and adolescents.

8       **III. PLAINTIFF HAS EXPENDED CONSIDERABLE RESOURCES COMBATTING**  
9       **DEFENDANTS' MISINFORMATION CAMPAIGN ABOUT SUGAR-**  
10       **SWEETENED BEVERAGES THAT IT COULD AND WOULD HAVE**  
11       **ALLOCATED ELSEWHERE.**

12           109. Aware of the momentous health consequences of sugar-sweetened beverage  
13 consumption—that is, their link to the rising epidemics of obesity, type 2 diabetes, and  
14 cardiovascular disease—Plaintiff has been forced to expend substantial resources attempting to  
15 educate the public and policy-makers about sugar-sweetened beverages, including the inaccuracy  
16 of Defendants' messages on the science of sugar-sweetened beverages, the need for enhanced  
17 regulation and transparency, and reduction in consumption.

18           110. Aware that consumers purchase Coca-Cola sugar-sweetened beverages believing  
19 them to be part of a healthy diet, not linked to obesity, and/or good sources of hydration, and the  
20 like, relying on Defendants' deceptive representations, and that consumers would not have  
21 purchased them had they known the truth, Plaintiff has been forced to expend substantial  
22 resources attempting to educate the public and policy-makers about sugar-sweetened beverages,  
23 including the inaccuracy of Defendants' messages on the science of sugar-sweetened beverages,  
24 and the need for reduction in consumption and marketing transparency.

25           111. Plaintiff has allocated significant resources to support advocacy about sugar-  
26 sweetened beverages, including through its major initiative on obesity prevention for children  
27 aged 0-5. In addition to providing educational materials, this initiative includes frequent  
28 keynotes and speeches by Plaintiff's staff, including its Executive Director, and participation in

1 material conferences addressing the determinants of obesity, including SSBs, and rebutting  
2 information disseminated by Coca-Cola and the ABA.

3 112. Plaintiff also serves on the national advisory committee for Voices for Healthy  
4 Kids, and on the Advisory Board for Open Truth, which seeks to increase awareness of the  
5 negative impacts of sugar-sweetened beverages on health and seeks to expose non-transparent  
6 and manipulative marketing techniques by Defendants. Its Executive Director, Xavier Morales,  
7 serves on the Berkeley Sugar-Sweetened Beverage Commission, which makes investment  
8 recommendations for the Berkeley City Council relating to programs that aim, in key part, to  
9 educate the public about the risks of routine consumption of sugar-sweetened beverages.

10 113. Plaintiff has allocated substantial resources to cover the cost of its advocacy,  
11 including for meetings with policy makers in various local and state regulatory bodies.

12 114. The funding that Plaintiff expends on its sugar-sweetened-beverage advocacy  
13 efforts requires it to divert resources away from other important public health and nutrition  
14 initiatives.

15 115. Each of these resource-intensive activities was untaken prior to and independent  
16 of this litigation, and not in furtherance of it.

17 116. If Plaintiff prevails in this litigation, it will no longer need to divert its resources  
18 to combat the false and misleading representations and tactics employed by Defendants about  
19 sugar-sweetened beverages, and can allocate such resources to other health-based projects.

## 20 **CLAIMS FOR RELIEF**

### 21 **FIRST CLAIM**

#### 22 **Violation of the California Unfair Competition Law, 23 CAL. BUS. & PROF. CODE § 17200 *et seq.***

24 117. Plaintiff realleges and incorporates by reference the allegations in each of the  
25 preceding paragraphs of this Complaint.

26 118. Cal. Bus. & Prof. Code § 17200 (the “UCL”) prohibits any “unlawful, unfair, or  
27 fraudulent business act or practice.” Defendants have engaged in unlawful, unfair, and  
28 fraudulent business acts and practices in violation of the UCL.

1           119. Defendant Coca-Cola has violated the unlawful prong of the UCL by virtue of its  
2 violations of the False Advertising Law (“FAL”), as described below.

3           120. Defendants have violated the unfair prong of the UCL because the acts and  
4 practices set forth herein offend established public policy supporting truth in advertising to  
5 consumers. Defendants’ conduct is immoral, unethical, oppressive, unscrupulous, and injurious  
6 to consumers. The harm that these acts and practices cause to consumers greatly outweighs any  
7 benefits associated with them. Defendants’ conduct also impairs competition within the  
8 beverage industry.

9           121. Defendants have violated the fraudulent prong of the UCL because their material  
10 misrepresentations and omissions were likely to deceive a reasonable consumer and the true facts  
11 would be material to a reasonable consumer.

12           122. As alleged herein, Defendants’ advertising and public relations campaigns create  
13 the false impression that there is no link between consumption of sugar-sweetened beverages and  
14 obesity, diabetes, cardiovascular disease, or other related conditions, that sugar-sweetened  
15 beverages are a healthy component of any diet when “balanced” with some activity, and that  
16 drinking beverages to hydrate is “essential” to human health and that sugar-sweetened beverages  
17 are a good source of hydration.

18           123. Defendants have represented to the consumer public, and to those who advance  
19 and protect their health, that they were disclosing objective, unbiased scientific facts about the  
20 health consequences of consuming sugar-sweetened beverages when they were not.

21           124. Defendants have made and continue to make representations and statements about  
22 the safety of sugar-sweetened beverages and their effect on human health. These representations  
23 and statements have been materially false, incomplete, and fraudulent at the time Defendants  
24 made them, and Defendants knew or had reason to know of their falsity.

25           125. At all relevant times, Defendants intentionally, willfully, or recklessly  
26 misrepresented or failed to disclose material facts about the health consequences of regularly  
27 consuming sugar-sweetened beverages, including their link to obesity, type 2 diabetes, and  
28 cardiovascular disease.



1           126. Defendants’ knowledge of the material facts about sugar-sweetened beverages  
2 was and is superior to that of the consumer public.

3           127. By expressly raising the issue of sugar-sweetened beverage safety and denying  
4 any link between sugar-sweetened beverages and obesity, type 2 diabetes, and cardiovascular  
5 disease, and in addition making false statements about this issue, Defendants had a duty to reveal  
6 all the material facts of which they had notice, in order not to deceive and mislead the consumer  
7 public.

8           128. Defendants’ disclosure of fragmentary information and half-truths and  
9 suppression of relevant facts constitutes actionable misrepresentation under the UCL.

10           129. Defendants undertook such misrepresentations in order to induce the consumer  
11 public to purchase and continue to purchase sugar-sweetened beverage products and raise profits.

12           130. By virtue of their affirmative misconduct, Defendants had a duty to disclose that  
13 the scientific consensus is that: a) sugar-sweetened beverages are linked to obesity, type 2  
14 diabetes, and cardiovascular disease; b) activity does not “balance” away, or negate, the link  
15 between sugar-sweetened beverages and obesity-related chronic diseases; and c) hydration with  
16 sugar-sweetened beverages is not healthful or “essential” to the human body. They also had a  
17 duty to disclose all other material facts about the potential health hazards of sugar-sweetened  
18 beverage consumption of which they had notice.

19           131. Defendants’ omissions are material because reasonable consumers would consider  
20 the omitted science linking sugar-sweetened beverages to chronic disease to be important in  
21 determining whether or not to purchase sugar-sweetened beverages.

22           132. Reasonable consumers were likely to be deceived, and were in fact misled, by  
23 Defendants’ misrepresentations and omissions. Reasonable consumers relied on Defendants’  
24 actions.

25           133. Coca-Cola knows or reasonably should have known that the promotion,  
26 marketing and sale of its sugar-sweetened beverages was and is deceptive.

27  
28

134. Plaintiff has suffered injury in fact as a result of Defendant' unlawful, unfair, and/or deceptive practices because Plaintiff has incurred costs and diverted resources educating the public and public servants about Defendants' material misrepresentations and omissions.

135. Moreover, as a direct and proximate result of Defendants' fraudulent misrepresentations and active concealment, the consumer public has suffered and will continue to suffer substantial injuries.

136. All of the wrongful conduct alleged herein occurred, and continues to occur, in the business of selling sugar-sweetened beverages. Defendants' wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California and nationally.

137. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair and deceptive business practices, and to provide such other relief as set forth below.

## SECOND CLAIM

**Violations of the California False Advertising Law,  
CAL. BUS. & PROF. CODE § 17500, *et seq.***

138. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

139. California Business & Professions Code §§ 17500, *et seq.* (the “FAL”), broadly proscribes deceptive advertising in this State. The FAL makes it unlawful for any corporation or association intending to sell products or to induce the public to make purchases to make any statement in connection therewith which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

140. When a corporation or association has a duty to disclose material facts about a product or about potential purchases of a product, representations to consumers without disclosure of such material facts violates the FAL.

141. As alleged herein, Coca-Cola's advertising and both Defendants' promotion of sugar-sweetened beverages creates the impression that their consumption is not linked to obesity, type 2 diabetes, and cardiovascular disease, that it can be "balanced" with activity so as to be

1 healthful, and that it provides “essential” and healthful hydration. Defendants failed to disclose  
2 in their promotion and advertising campaigns that scientific consensus about sugar-sweetened  
3 beverages is to the contrary of each of these claims when they had a duty to make such  
4 disclosure.

5 142. Defendants’ misrepresentations and omissions are material because reasonable  
6 consumers would consider the omitted facts to be important in determining whether or not to  
7 purchase sugar-sweetened beverages.

8 143. Reasonable consumers were likely to be deceived, and were in fact misled, by  
9 Defendants’ misrepresentations and omissions.

10 144. Defendants know or reasonably should have known that statements they made in  
11 the promotion, marketing and sale of sugar-sweetened beverage products were and are deceptive.

12 145. Plaintiff has suffered injury in fact as a result of Defendants’ unlawful, unfair,  
13 and/or deceptive practices because Plaintiff has been required to incur costs and divert resources  
14 educating the public and policy makers about the inadequacy and misleading nature of  
15 Defendants claims and material omissions about sugar-sweetened beverages.

16 146. All of the wrongful conduct alleged herein occurred, and continues to occur, in  
17 the business of selling sugar-sweetened beverages. Defendants’ wrongful conduct is part of a  
18 general practice that is still being perpetuated and repeated.

19 147. Plaintiff requests that this Court enter such orders or judgments as may be  
20 necessary to enjoin Defendants from continuing their false advertising and other false statements,  
21 and provide such other relief as set forth below.

### 22 **THIRD CLAIM**

#### 23 **Intentional Breach of Special Duty**

24 148. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

25 149. Defendants assumed a special duty to protect the consumer public when they  
26 actively misrepresented that the wellbeing of consumers was an industry priority and that the  
27 science they presented was objective, reliable, and demonstrated no link between sugar-  
28 sweetened beverages and obesity, type 2 diabetes, and cardiovascular disease.

1           150. Defendants also undertook a special duty by funding and organizing deceptive  
2 exercise-focused campaigns around California, the United States, and globally.

3           151. Continuing to date, Defendants' spokespersons have repeatedly announced that  
4 research is underway showing that sugar-sweetened beverages and obesity, type 2 diabetes, and  
5 cardiovascular disease are not linked, and moreover that obesity is caused instead by lack of  
6 exercise and "balance." These actions were and remain a part of Defendants' campaign of  
7 disinformation designed to obscure the evidence that sugar-sweetened beverages are linked to  
8 obesity, type 2 diabetes, and cardiovascular disease.

9           152. Defendants did not make these representations gratuitously, rather, they were  
10 made to combat the emerging scientific consensus about the consumption of sugar-sweetened  
11 beverages and, more specifically, to protect profits from the sale of sugar-sweetened beverages.

12           153. Defendants also represented that the well-being of their consumers was one of  
13 their primary concerns.

14           154. Further, Defendant Coca-Cola represented repeatedly that it does not advertise to  
15 children.

16           155. Each of these undertakings was designed to, among other purposes, cause  
17 consumers to believe that they could continue to consume sugar-sweetened beverages on a  
18 routine and often daily basis healthfully.

19           156. In making these representations, Defendants assumed duties to the public and  
20 Plaintiff.

21           157. Defendants had a duty to disclose the whole truth about the link between sugar-  
22 sweetened beverages and obesity, diabetes, and cardiovascular disease, and, by extension, the  
23 truth about the science of "balance." Defendants breached this duty.

24           158. Defendants could have reasonably foreseen the risk of harm to Plaintiff and the  
25 public. Defendants knew and/or could foresee that their actions would result in continued  
26 substantial consumption of sugar-sweetened beverages by the public and/or large portions  
27 thereof—especially children and less-educated populations and consumers.

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159. The very purpose behind the assumption of this duty was simultaneously to promote the purchase and consumption of sugar-sweetened beverages, and to prevent or delay regulatory activities designed to curb such purchase and consumption.

160. Defendants' intentional breach of their assumed duties therefore influenced the conduct of Plaintiff to its detriment.

161. As a direct, foreseeable, and proximate cause of Defendants' intentional breach of their specially assumed duties, the public continued to consume sugar-sweetened beverages when they would not otherwise, and Plaintiff has been forced to expend and divert its resources to fight these trends and inform consumers of the truth.

### FOURTH CLAIM

### Negligent Breach of Special Duty

162. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

163. Defendants knew or should have known that the special duties that they assumed were important to consumer and to Plaintiff, and their failure to carry out these duties would substantially increase the risk of harm to Plaintiff.

164. Defendants have breached and continue to breach their special duties, have failed to exercise reasonable care in the performance of their special duties, and this has substantially increased the risk of harm to Plaintiff.

165. As a direct and proximate result of Defendants' negligent breach of their specially assumed duty of care, Plaintiff has suffered and continue to suffer substantial injuries for which it is entitled to recover.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment against Defendants and in favor of Plaintiff, as follows:

A. Declare, adjudge and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, and in violation of the Unfair Competition Law;

B. Declare, adjudge and decree the conduct of Defendants as alleged herein to be a violation of the Fair Advertising Law;

1 C. Declare, adjudge and decree the conduct of Defendants as alleged herein to be a  
2 violation of their special duties;

3 D. Enjoin Defendants from continuing the unfair and deceptive promotion,  
4 marketing and sale of sugar-sweetened beverages, including any claim that sugar-sweetened  
5 beverages are not linked to obesity, diabetes, or cardiovascular disease;

6 E. Enjoin Defendant Coca-Cola from continuing the promotion, marketing and sale  
7 of its sugar-sweetened beverages to children under 12, directly or indirectly;

8 F. Require Defendants to disclose, disseminate, and publish all research previously  
9 conducted, directly or indirectly, through agents, affiliates, officers, directors, employees, and all  
10 persons acting in concert with them, that relates to the impact of sugar-sweetened beverage  
11 consumption on health;

12 G. Require Defendants to disclose, disseminate, and publish all research previously  
13 conducted, directly or indirectly, through agents, affiliates, officers, directors, employees, and all  
14 persons acting in concert with them, that relates to the impact of exercise on health and obesity,  
15 as contrasted with consumption of sugar-sweetened beverages, or any other caloric intake;

16 H. Require Defendants to fund a corrective public education campaign to reduce the  
17 consumption of sugar-sweetened beverages;

18 I. Require Defendants to prominently post on their websites that the consumption of  
19 sugar-sweetened beverages can lead to obesity, diabetes, and cardiovascular disease.

20 J. Award Plaintiff reasonable attorneys' fees and costs; and

21 K. Award Plaintiff such other further and different relief as the nature of the case  
22 may require or as may be determined to be just, equitable, and proper by this Court.  
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Date: January 17, 2017

**REESE LLP**

*Counsel for Plaintiff The Praxis Project*